

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
INTERBAY ROOFING CO., INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 933

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

THIS MATTER being the appeal of a \$50 civil penalty for an alleged smoke emission violation; having come on regularly for formal hearing before the Pollution Control Hearings Board on the 5th day of April, 1976, at Seattle, Washington; and appellant, Interbay Roofing Co., Inc., appearing through James M. Martin and respondent, Puget Sound Air Pollution Control Agency, appearing through its attorney, Keith D. McGoffin; and Board members present at the hearing being Chris Smith, Chairman and Walt Woodward and the Board having considered the sworn testimony, exhibits, records and files herein


1 and arguments of counsel and having entered on the 20th day of
2 April, 1976, its proposed Findings of Fact, Conclusions of Law
3 and Order, and the Board having served said proposed Findings,
4 Conclusions and Order upon all parties herein by certified mail,
5 return receipt requested and twenty days having elapsed from said
6 service; and

7 The Board having received no exceptions to said proposed
8 Findings, Conclusions and Order; and the Board being fully advised in
9 the premises; now therefore,

10 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that said proposed
11 Findings of Fact, Conclusions of Law and Order dated the 20th day
12 of April, 1976, and incorporated by reference herein and attached
13 hereto as Exhibit A, are adopted and hereby entered as the Board's
14 Final Findings of Fact, Conclusions of Law and Order herein.

15 DONE at Lacey, Washington, this 13th day of May, 1976.

16 POLLUTION CONTROL HEARINGS BOARD

17 
18 _____
CHRIS SMITH, Chairman

19 
20 _____
21 WALT WOODWARD, Member

22
23
24
25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER

CERTIFICATION OF MAILING

I, LaRene Barlin, certify that I deposited in the United States mail, copies of the foregoing document on the 13th day of May, 1976, to each of the following-named parties, at the last known post office addresses, with the proper postage affixed to the respective envelopes:

Mr. Keith D. McGoffin
Burkey, Marsico, Roval, McGoffin,
Turner and Mason
818 South Yakima Avenue
Tacoma, Washington 98405

Puget Sound Air Pollution Control Agency
410 West Harrison Street
Seattle, Washington 98119

Mr. James M. Martin
Landon & Martin
3105 Seattle-First Bank Building
Seattle, Washington 98154

Interbay Roofing Co., Inc.
2204 Airport Way South
Seattle, Washington 98134


LARENE BARLIN
POLLUTION CONTROL HEARINGS BOARD

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
INTERBAY ROOFING CO., INC.,)
Appellant,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHE No. 933

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$50 civil penalty for an alleged
stroke emission violation, came before the Pollution Control Hearings
Board (Chris Smith, Chairman, and Walt Woodward) as a formal hearing in
the Seattle facility of the State Board of Industrial Insurance Appeals
on April 5, 1976.

Appellant appeared through James M. Martin; respondent through
Keith D. McGoffin. Sherri Darkow, Olympia court reporter, recorded the
proceedings.

Witnesses were sworn and testified. Exhibits were admitted.

EXHIBIT A

1 Counsel made closing arguments.

2 From testimony heard, exhibits examined and arguments considered,
3 the Pollution Control Hearings Board makes these

4 FINDINGS OF FACT

5 I

6 Respondent, pursuant to RCW 43.21B.260, has filed with this Board
7 a certified copy of its Regulation I containing respondent's regulations
8 and amendments thereto.

9 Section 9.03(b) of Regulation I makes it unlawful to cause or
10 allow emission of an air contaminant darker in shade than No. 1
11 (20 percent density) on the Ringelmann Chart for more than three minutes
12 in any one hour.

13 Section 3.29 authorizes a civil penalty of not more than \$250 for
14 each violation of Regulation I.

15 II

16 Appellant is a roofing contractor operating in five states. Its
17 president for 18 years, Lawrence Musil, is a director of the National
18 Roofing Contractors Association and a past president of the state
19 association. Aware that the industry's traditional "tar pot" contributes
20 to air pollution, appellant employs a "tanker" system to bring hot
21 asphalt to a roofing area. Instead of applying heat constantly to a
22 pot to melt asphalt as in the case of the tar pot, the tanker transports
23 pre-heated, molten asphalt to the site. A closed-pipe system pumps
24 the asphalt from the tanker to the roof.

25 A motion picture (Exhibit A-1) of a tanker in operation at a roofing
26 site established that when the closed-pipe system is not being used

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

broken wisps of vapor-like emissions constantly flutter from a vent on top of the tanker; the wisps rapidly vanish from sight in the atmosphere.

III

On September 19, 1975, at a roofing site near Seattle Pacific College in Seattle, King County, an inspector on respondent's staff observed what he believed to be a 60 percent opacity white plume for six consecutive minutes from the vent of an asphalt tanker owned and operated by appellant.

Pursuant to this observation, he served on appellant Notice of Violation No. 11730, citing Section 9.03 of respondent's Regulation I and Notice of Civil Penalty No. 2542 in the sum of \$50, which is the subject of this appeal.

He took a photograph of the plume but the photograph was not offered as an exhibit.

Under cross-examination by a member of the Board, the inspector testified that the plume on which he based the citation was similar-- "perhaps a little more opaque"--to the broken wisps of vapor-like emissions which fluttered from the tanker vent in Exhibit A-1.

IV

Any Conclusion of Law hereinafter recited which is deemed to be a Finding of Fact is herewith adopted as same.

From these Findings, the Pollution Control Hearings Board comes to these

CONCLUSIONS OF LAW

I

In a civil penalty matter such as this one, respondent must

FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER

1 establish its case with a preponderance of the evidence. While this
2 Board is most reluctant to question the testimony of a trained, qualified
3 and experienced inspector on respondent's staff, it simply is not able,
4 in this matter, to conclude that the preponderance of evidence rests with
5 respondent. The Board cannot find that the subject emission, resembling
6 broken wisps of vapor-like emissions which it saw in Exhibit A-1 and
7 which the inspector testified were similar to that on which he based the
8 citation, constitutes a violation under Section 9.03 of respondent's
9 Regulation I, even when the Board allows for the inspector's contention
10 that the emissions he saw were "perhaps a little more opaque."

11 We conclude that there was no infraction of respondent's Regulation
12 I, as cited in Notice of Violation No. 11730. The appeal, therefore,
13 should be sustained.

14 II

15 Any Finding of Fact stated herein which is deemed to be a
16 Conclusion of Law is herewith adopted as same.


17 Therefore, the Pollution Control Hearings Board issues this


18 ORDER

19 The appeal is sustained and Notice of Civil Penalty No. 2542 in
20 the sum of \$50 is vacated.

21 DONE at Lacey, Washington this 20th day of April, 1976.

22 POLLUTION CONTROL HEARINGS BOARD

23 
24 CHRIS SMITH, Chairman

25 
26 WALT WOODWARD, Member

27 FINDINGS OF FACT,
CONCLUSIONS OF LAW AND ORDER